

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN CIVIL LIBERTIES UNION,

et al.,

Plaintiffs,

v.

ALBERTO R. GONZALES, in his official
capacity as Attorney General of the United
States,

Defendant.

Civil Action No. 98-CV-5591

**DEFENDANT'S MOTION TO DISMISS AND, IN THE
ALTERNATIVE, FOR PARTIAL JUDGMENT ON THE PLEADINGS**

Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(c), Defendant hereby moves to dismiss the complaint for lack of subject matter jurisdiction and, in the alternative, for partial judgment on the pleadings. The grounds for this motion are set forth in the accompanying memorandum. A proposed Order is attached hereto.

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/s/ _____
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Date: August 25, 2006

CERTIFICATE OF SERVICE

I hereby certify that I am electronically filing the foregoing DEFENDANT'S MOTION TO DISMISS AND, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS, with a supporting memorandum and a proposed order, and that the electronic filing of this motion constitutes effective service on Plaintiffs' counsel. I also hereby certify that I have made service of the EXHIBITS IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND, IN THE ALTERNATIVE, FOR JUDGMENT ON THE PLEADINGS by depositing in Federal Express at Washington, D.C., on August 25, 2006, a true, exact copy thereof, enclosed in an envelope with postage thereon prepaid, addressed to:

Aden J. Fine, Esquire
ACLU Foundation
125 Broad Street, 18th Floor
New York, New York 10004

/s/ Tamara Ulrich
TAMARA ULRICH
Attorney